Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Consumer Protection in a Broadband Era	)	WC Docket No. 05-271
	)	

REPLY COMMENTS OF THE NEW JERSEY DIVISION OF THE RATEPAYER ADVOCATE

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I. INTRODUCTION

The New Jersey Division of the Ratepayer Advocate ("Ratepayer Advocate") hereby responds to the initial comments submitted in response to the Federal Communications Commission's ("FCC" or "Commission") *Report and Order and Notice of Proposed Rulemaking* ("NPRM") in the above referenced proceeding.[1] Comments in this proceeding support the Ratepayer Advocate's position that consumer protection regulations are essential and that such regulations should be applied equally to all broadband Internet access ("BIA") providers. Despite industry protests to the contrary, the broadband market is not fully competitive – but rather operates as a

[1] / *In the Matters of Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, CC Docket No. 02-33; *Universal Service Obligations of Broadband Providers, Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services*, CC Docket No. 01-337; Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review –Review of Computer III and ONA Safeguards and Requirement, CC Docket Nos. 95-20, 98-10; *Conditional Petition of the Verizon Telephone Companies for Forbearance Under 47 U.S.C. § 160(c) with Regard to Broadband Services Provided Via Fiber to the Premises; Petition of the Verizon Telephone Companies for Declaratory Ruling or, Alternatively, for Interim Waiver with Regard to Broadband Services Provided Via Fiber to the Premises*, WC Docket No. 04-242; *Consumer Protection in the Broadband Era*, WC Docket No. 05-271*, Report and Order and Notice of Proposed Rulemaking,* rel. September 23, 2005 ("NPRM").

duopoly – and what little competition does exist does not provide adequate consumer protection. Arguments that the threat of consumer defection provides the industry with sufficient incentives for good behavior are unconvincing: the transaction costs associated with changing broadband Internet access providers are high, and the competitive options are few. Industry suggestions that the Commission should defer crafting consumer protections until after problems arise are unconvincing, particularly in the face of existing consumer complaints. Consumers have come to expect certain minimum standards regarding information privacy, slamming, truth-in-billing, and discontinuance notification in connection with their communications technologies. Such protections should not be jettisoned as increasing numbers of consumers begin to subscribe to broadband alternatives. Furthermore, consumers need access to data with respect to outages and consumers complaints in order to make fully informed purchasing decisions. Finally, states are critically important participants in crafting and enforcing consumer protections because of their knowledge of local markets and their role as primary contact for many consumers. States have the absolute right to protect consumers under our Constitutional form of government. Therefore, the Commission should reject industry pleas to preempt state establishment and state enforcement of consumer protection measures.

II. CONSUMER PROTECTION

The Commission should not rely solely on market forces to protect consumers.

In initial comments, telecommunications and cable companies rely extensively and repeatedly on the purported presence of competition in the broadband Internet access market as a sweeping rationale for forgoing or postponing the establishment of consumer protection measures. The Ratepayer Advocate urges the Commission to reject the industry's misplaced confidence in the role of the market, as it presently exists, as an adequate level of consumer protection. AT&T Inc. ("AT&T") cites a "Congressional preference for market forces," and contends that the Commission should not adopt consumer protection regulations unless and until there is an obvious market failure.[2] The Organization for the Promotion and Advancement of Small Telecommunications Companies ("OPASTCO") considers the consumer protection rules under consideration "inappropriate and unnecessary," and further contends that the adoption of such rules will "only serve to hamper rural ILECs' ability to provide quality service and extend the reach of broadband Internet access to greater numbers of consumers."[3] Similarly, Time Warner Inc. ("Time Warner") suggests that regulations will "impede the continued development of such services."[4] The Verizon telephone companies

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[2] / AT&T, at 1. *See,* also, AT&T at 4, stating "the Commission should not lose sight of the fact that Congress has determined that market forces, not regulation, will bring the greatest benefits to our nation's broadband customers" citing Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 ("1996 Act"), Section 230(b)(2). The 1996 Act amended the Communications Act of 1934. Hereinafter, the Communications Act of 1934, as amended by the 1996 Act, will be referred to as "the 1996 Act," or "the Act," and all citations to the 1996 Act will be to the 1996 Act as it is codified in the United States Code.

[3] / OPASTCO, at 2; *See*, also Telecommunications Industry Association ("TIA"), at 3 suggesting that consumer protection regulations "serve as weights on investment, innovation and competition among and between broadband platforms."

[4] / Time Warner, at 5; *See*, also, CTIA, at 9-10.

("Verizon") echo the sentiment that regulations will deter investment.[5] Yet, on the other hand, OPASTCO proposes that the current level of competition in the market provides strong incentives for broadband Internet access providers to provide excellent service quality and protect consumers without regulations.[6] The industry's simultaneous assertions that consumer protection measures will deter investment and that the industry is competitive are incompatible.

CTIA – The Wireless Association ("CTIA") asserts that "under a deregulatory federal framework the wireless industry has experienced explosive growth" and suggests that the same result would occur in the broadband market.[7] However, CTIA neglects to mention that during the wireless industry's explosive growth, the industry has also experienced poor service quality, disrupted telephone calls, and confusing telephone bills. The Ratepayer Advocate certainly welcomes growth in the broadband market but disputes the industry's implication that such growth is incompatible with appropriate government oversight. CTIA also overlooks the fact that the FCC adopted revised truth-in-billing ("TIB") rules for wireless carriers to remedy problems encountered by consumers regarding wireless service.

The Ratepayer Advocate urges the Commission to reject the industry's recommendation that regulators wait until *after* there is substantial evidence of misconduct in the market and a history of consumer harm before even beginning to address consumer protection measures. For example, the Commission should reject BellSouth Corporation's ("BellSouth") recommendation that it "take a wait-and-see approach and consider rules only if and when it finds specific problems in the provision

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[5] / Verizon, at 5.

[6] / OPASTCO, at 3.

[7] / CTIA, at 6.

of BIA [broadband Internet access] services,"[8] intervening "only if a market failure develops."[9]

The industry would have the Commission believe that consumer protection measures are solutions in search of a problem. For example, Time Warner states that "[b]ecause there is no reason to expect that any hypothesized market failures will come to pass, the Commission should refrain from needlessly imposing burdens on service providers."[10] Consumer issues, however, are not theoretical. The Commission provided an example of the numerous problems that subscribers encountered when a provider shut down its network, including service outages, inadequate customer support, and loss of high-speed access.[11] In its comments, the Public Utilities Commission of Ohio ("Ohio PUC") discussed some of the problems it is witnessing with respect to the provision of voice over Internet protocol ("VoIP") telephone service.[12] The Ohio PUC states that VoIP is often marketed as a substitute for traditional phone service and, therefore, providers "may lead consumers to have the same expectations regarding fair business practices that they have of comparable providers of traditional telephone services."[13] Also, the Ohio PUC's Call Center has received over 450 calls regarding digital subscriber line ("DSL") marketing and billing concerns.[14] The Ratepayer Advocate concurs with the Ohio PUC that the "same core consumer protection required for

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[8] / BellSouth, at 4.

[9] / *Id.*, at 8; *See*, also AT&T, at 4; Qwest Communications International, Inc. ("Qwest"), at 2; United States Telecom Association ("USTelecom"), at 1; Time Warner, at 1-2; CTIA, at 1-2; CTIA, at 11; Cingular Wireless, LLC ("Cingular"), at 6. See also Qwest, at 2, stating "[o]nly if the presumed market discipline is shown to fail in some particular instance or aspect should more intrusive federal regulatory requirements be appended to the service offerings."

[10] / TimeWarner, at 7. See also AT&T, at 4; USTelecom, at 4; Cingular, at 6, Verizon, at 6. USTelecom states that "there is no significant evidence, if any at all, that consumers are having problems with their broadband services that would warrant imposition of regulations protecting them." USTelecom, at 4.

[11] / *NPRM,* at fn 464.

[12] / Ohio PUC, at 2.

[13] / *Id.*, at 3.

[14] / *Id.*, at 11.

traditional telephone should be applied to VoIP-based telephone service offered by broadband Internet access service providers – regardless of the outcome of pending jurisdictional disputes concerning VoIP services."[15]

The Bell operating companies argue that general consumer protection laws already exist and are sufficient.[16] AT&T specifically discusses the roles of the Federal Trade Commission ("FTC") and state attorneys general offices.[17] However, the existence of some consumer protection laws does not preclude additional industry-specific measures, as warranted. States are familiar with existing laws and are the typical first stop for consumer complaints. Based on their specific knowledge of existing laws and industry practices, states can design, and indeed should be encouraged to design, additional measures as necessary. States have concurrent jurisdiction to protect consumers.

Despite industry assertions to the contrary, customers who migrate among broadband services and providers incur significant transaction costs, and, therefore, the presence of more than one broadband Internet access provider in a given market does not justify the absence of consumer safeguards.

An analysis of broadband service providers' rates, terms and conditions demonstrates that migration among suppliers is not costless. The industry seeks to depict a competitive market in which those customers who are displeased with their service can migrate to another provider. However, customers must pay a steep premium to have that purported flexibility in choice of providers. Furthermore, as these comments discuss, the ability to select within an industry that is controlled by a cable-telco duopoly does not protect consumers adequately.

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[15] / *Id.*, at 4. The New York State Department of Public Service ("New York DPS") also supports the application of current consumer protection rules to broadband consumer services. New York DPS, at 5.

[16] / *See* AT&T and BellSouth, at 4-5. *See also* BellSouth, at 9, which suggests that most states in BellSouth's operating territory currently have statutes that bar deceptive business practices.

[17] / AT&T, at 9-10.

Broadband service providers use various tactics to lock-in customers. Although some of these tactics may offer short-term benefits to the consumer, they also impose transaction costs if the customer later wishes to change service providers. Some of the tactics that deter migration by increasing the cost to customers of changing service providers are:

- offering discounts for one-year contracts, instead of month-to-month agreements,
- bundling necessary equipment with a long-term commitment,
- imposing early termination fees, and
- non-portability of features.

Verizon and AT&T, for example, offer significant discounts to customers who make one-year commitments relative to those who choose to purchase service on a month-by-month basis. An analysis of the one-year cost (exclusive of any taxes of other fees), summarized in the table below, shows that new Verizon and AT&T customers incur costs of $143.95 and $264 per year, respectively, to avoid lock-in arrangements.[18]

[18] / For continuing customers (after twelve months), the yearly lock-in avoidance premium is $96 for Verizon, and $60 for AT&T. http://www22.verizon.com/ForHomeDSL/channels/dsl/packages/default.asp, http://www22.verizon.com/ForHomeDSL/channels/dsl/popups/verizononlinedslpricingplans.asp;https://swot.sbc.com/swot/dslMassMarketCatalog.do?do=view&serviceType=DYNAMICIP

Table 1

Significant Transaction Costs Deter Customers' Migration Among Suppliers

Verizon 3 Mbps/768 kbps Service, New Customer		AT&T 3 Mbps/512 kbps Service, New Customer	
One year contract		One year contract	
Service for 12 Months	$313.45	Service for 12 Months	$215.88
Modem	included	Modem	$0.00
Shipping and Handling	$19.95	Shipping and Handling	$0.00
Total	$333.40	Total	$215.88
Month-to-Month		Month-to-Month	
Service for 12 Months	$417.45	Service for 12 Months	$479.88
Modem	$39.95	Modem	$0.00
Shipping and Handling	$19.95	Shipping and Handling	$0.00
Total	$477.35	Total	$479.88
Lock-in Avoidance Premium	$143.95	Lock-in Avoidance Premium	$264.00

Broadband service requires special equipment – at the very least either a DSL modem or a cable modem – which can represent a substantial financial hurdle for consumers. BellSouth and AT&T offer rebates on required equipment to encourage consumers to adopt broadband service, and then to remain loyal customers. BellSouth offers a modem rebate to users who commit to one year of service, a benefit that BellSouth values at $75. AT&T offers a modem rebate of $49.95 to customers who continue service for at least 60 days.[19]

The industry also uses early termination fees to deter customers from switching service. Verizon charges customers $79 if they choose to terminate their contract early; AT&T charges $99

[19] / http://www.bellsouth.com/consumer/inetsrvcs/index.html; http://www.bellsouth.com/consumer/inetsrvcs/inetsrvcs_fa_terms.html; https://swot.sbc.com/swot/dslMassMarketCatalog.do?do=view&serviceType=DYNAMICIP https://swot.sbc.com/swot/dslMassMarketCatalog.do?do=view&serviceType=DYNAMICIP

for early service termination; and BellSouth, although it does not have an explicit early termination fee, revokes its equipment rebate of $75 if a twelve-month contract is terminated early. These fees undermine the industry's position that consumers can move seamlessly from one service provider to another.[20]

Furthermore, consumers are inconvenienced by the loss of an email address, if provided by the former service provider, and possibly loss of other services, such as online file storage and personal web pages. If a consumer finds these features valuable, then she must take into account the cost of replacing them when terminating service. The non-portability of these features represents another cost to consumers.

Customers choosing cable broadband service also typically pay a large initial sum of money to initiate service: Cable modem prices range from $70 to $180. Alternatively, consumers may rent a cable modem for between $3 per month (Comcast) and $10 per month (Cox). This start-up expense serves as a disincentive for customers considering the move from DSL broadband service to cable broadband service, as the move requires replacement of a DSL modem with a cable modem, a new purchase. Also, installation is more involved, and more expensive for cable broadband than it is for DSL service. For example, Cox provides self installation kits for free in Roanoke, Virginia; for $9.95 in New England; and for $29.95 in Cleveland, Ohio. Comcast charges $29.95, plus $9.95 shipping and handling, for self installation kits. Cox and Comcast charge approximately $100 for

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[20] / http://www22.verizon.com/ForHomeDSL/channels/dsl/packages/default.asp, http://www22.verizon.com/ForHomeDSL/channels/dsl/popups/verizononlinedslpricingplans.asp; http://www.bellsouth.com/consumer/inetsrvcs/index.html; http://www.bellsouth.com/consumer/inetsrvcs/inetsrvcs_fa_terms.html; https://swot.sbc.com/swot/dslMassMarketCatalog.do?do=view&serviceType=DYNAMICIP

professional installation.[21]

Consumer protection measures without adequate enforcement are meaningless.

In contrast to the industry's proposed reliance on the market place to achieve consumer protection objectives, the Ratepayer Advocate concurs with the National Association of Regulatory Utility Commissioners ("NARUC") that, in some instances, penalties and enforcement are necessary to counterbalance carriers' incentives to increase profits through practices such as slamming, misleading billing, and abuse of consumers' privacy.[22] Existing market forces are inadequate to ensure responsible carrier practices. As AARP explains, "[m]arket forces alone are insufficient to resolve the complexities of broadband consumer issues such as privacy, truth-in-billing, service disruptions, information disclosures, etc."[23] Also, as NARUC explains, market forces will not enable federal and state government agencies to achieve public policy objectives such as universal service, emergency communication and infrastructure investment.[24]

The Ratepayer Advocate concurs with the Consumer Groups[25] that consumer protections "will only be as meaningful as the ability of consumers to have these rights enforced."[26] Consequences for those industry participants that fail to abide by consumer protection measures are essential. The Ratepayer Advocate also concurs with the Consumer Groups that "[p]rotections

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[21] / https://secure.cox.com/Service/Offers/selectlocation.aspx; http://www.comcast.com/Localization/Localize.ashx?Referer=/Buyflow/default.ashx

[22] / NARUC, at 10.

[23] / AARP, at 2.

[24] / NARUC at 10-11.

[25] / The comments of the "Consumer Groups" were filed by the National Consumer Law Center (on behalf of Texas Legal Services Center, Ohio Community Computing Network and Cleveland Digital Vision, Inc.), Appalachian People's Action Coalition, Disability Rights Advocates, Edgemont Neighborhood Coalition, and Latino Issues Forum.

[26] / Consumer Groups, at 7.

similar to those in the telephone slamming rule that puts the onus on the bad actor, and not the victim should be provided in the broadband context."[27] The Ratepayer Advocate urges the Commission to reject the industry's misplaced reliance on the market to protect consumers. Instead, the Commission should establish comprehensive consumer protection measures *before* consumers suffer marketplace abuses rather than *after* such problems proliferate.

All broadband service consumers, regardless of the technology platform, should be afforded adequate consumer protection.

Several commenters contend that all regulations that the Commission adopts should be applied to all providers of broadband access, regardless of the underlying technology.[28] AT&T asserts that any measures "should be crafted in a competitively neutral manner and should apply evenhandedly to *all* providers of broadband-based services and applications."[29] USTelecom also seeks equal application of regulations if any are adopted,[30] and, similarly, Verizon suggests that any requirements that are adopted should be "applied equally to both cable and telco providers of these services."[31]

On the other hand, DSLnet Communications, LLC ("DSLnet") is concerned that broadband Internet access providers providing services as common carriers (*i.e.*, Title II carriers) will be disadvantaged because they operate under more regulatory oversight than do Title I providers.[32] DSLnet reminds the Commission that, in the *Wireline Broadband Order* issued in this proceeding,

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[27] / *Id.*, at 9-10, citing 47 C.F.R. § 64.1140.

[28] / BellSouth, at 5; AT&T, at 7; Verizon, at 2.

[29] / AT&T, at 7 (emphasis in original).

[30] / USTelecom, at 7.

[31] / Verizon, at 29.

[32] / DSLnet, at 1.

the Commission determined that it should regulate similar services the same way. DSLnet explains: "It would be untenable and ironic if one of the consequences of the Wireline Broadband Order, adopted to promote parity in retail regulation of ILEC and cable broadband services, led to the creation of significant new disparities between those broadband Internet access providers that are dependent on UNEs such as DSLnet, versus those that are not."[33] The Ratepayer Advocate submits that consumer protection regulations should apply equally to all broadband Internet access providers.

AT&T and BellSouth cite the FCC's own statistics in an attempt to demonstrate that the broadband market is competitive. Although BellSouth's statistics indicate a cable-telco rivalry,[34] the presence of a duopoly does not provide evidence of effective competition. The Ratepayer Advocate disagrees with BellSouth's assertion that "[t]he same competitive pressures that were the basis for relief from the *Computer Inquiry* rules for the BOCs, will also protect consumer interests and obviate the need for additional consumer protection rules."[35]

BellSouth's reliance on the ability of consumers to switch to another provider is a bit facile in the face of one-year commitment deals common with DSL and the expensive start-up costs for equipment and installation.[36] USTelecom echoes the mantra of many that competition in the broadband market is "an effective substitute for most, if not all, regulation – both rate regulation and consumer protection regulation."[37] However, contrary to the industry's assertions, the broadband market is not effectively competitive and therefore, absent government oversight, consumers will be

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[33] / *Id.*, at 3.

[34] / BellSouth, at 5.

[35] / *Id.*, at 6.

[36] / *See*, *Id.*, at 6-7.

[37] / USTelecom, at 4. Similarly, Verizon claims that "competition for these services is robust and can be relied upon to promote customer interests." Verizon, at 1.

vulnerable to industry abuses.

The Commission should take steps to narrow the digital divide.

The Ratepayer Advocate reiterates its recommendation that the Commission take steps to narrow the digital divide that now separates segments of our nation's society.[38] The Ratepayer Advocate concurs with the Consumer Groups that "broadband Internet access services are more commonplace and we are in a new era where plain old telephone service (POTS) is an inferior mode of communications."[39] As the Consumer Groups state, "[b]roadband Internet access service is becoming an essential means of participating" in many aspects of society and "those left with Plain Old Telephone Service (POTS) will not have the capability of fully engaging in society."[40] The Consumer Groups raise concerns about disparate access to broadband that are similar to the concerns raised in the Ratepayer Advocate's initial comments.[41] Broadband services exhibit network externalities, and therefore, everyone benefits from the ubiquitous use of broadband networks. As the Consumer Groups explain, "the value of broadband services increases with the number of users connected to those services."[42]

In the absence of rate averaging, efforts to include all segments of society in the broadband era gain greater significance.

The Commission has raised the issue of rate averaging requirements.[43] Verizon opposes any attempt to require rate averaging, stating, "[t]he main point of classifying broadband Internet access

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[38] / Ratepayer Advocate at 15-23.

[39] / Consumer Groups, at 7.

[40] / *Id.*, at 7-8. *See also* Consumer Groups, at 10-14.

[41] / *Id.*, at 10-14; Ratepayer Advocate, at 15-23.

[42] / Consumer Groups, at 11.

[43] / *NPRM*, at para. 157.

services and the stand-alone broadband transmission used to provide them under Title I was to eliminate precisely this kind of market-distorting, investment-dampening economic regulation."[44] BellSouth similarly states that "Section 254(g) is a form of rate regulation that is wholly inappropriate in a competitive market."[45]

AT&T asserts that rate regulation of broadband services would be "in direct conflict [with] this Commission's well-established policy of eschewing *any* economic regulation for Internet –based services,"[46] and, that, furthermore, rate regulation may conflict with section 254, which requires that universal service support must be explicit and a rate averaging requirement for broadband providers would be "unlikely to survive judicial review."[47] Similarly, US Telecom and Time Warner vehemently oppose rate averaging for broadband services.[48] Cingular contends that typically it already has uniform national rates, and, therefore the issue is moot.[49]

Although cost-based rates (*i.e.*, rates that are not geographically averaged) likely will lead to more accurate pricing signals, such deaveraging should not occur without adequate subsidization of broadband service to underserved communities, including rural and low-income regions that might otherwise be neglected by industry's deployment plans and/or that may be unable to afford

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[44] / Verizon, at 23.

[45] / BellSouth, at 23. BellSouth states further that such regulation would "significantly alter the competitive dynamic and negatively affect the deployment of these services." *Id.*, at 23.

[46] / AT&T, at 15.

[47] / *Id.*, at 18.

[48] / USTelecom states that "[r]ate averaging is merely another form of rate regulation and as such is wholly inconsistent with Title I treatment of a service." USTelecom, at 7. Time Warner contends that "[r]ate regulation is perhaps the most intrusive and market-distorting form of economic regulation that the Commission has rightly sought to avoid with respect to broadband services." Time Warner, at 12.

[49] / Cingular, at 10.

broadband access to the Internet.[50]

Regardless of whether consumers rely on broadband or narrowband technology, consumer privacy safeguards are essential.

Although broadband providers pay lip service to the importance of protecting consumers' personal information, comments submitted by providers in this proceeding generally agree with the BellSouth statement that: "Use of the information in a competitive market, however, should be a matter left to the provider and its customer, and not subject to Commission-imposed rules. Indeed, this is how the broadband market currently operates."[51] Time Warner, among others, suggests that consumers will vote with their feet if their information is not adequately protected.[52] Verizon similarly submits that it "has every incentive to protect customer privacy and is continuously evaluating and updating its data security procedures to protect information entrusted to the company."[53] Verizon further argues that section 222 of the Act refers to the application of customer proprietary network information ("CPNI") rules to telecommunications providers not information services and that "[i]f Congress had intended to impose similar regulations on *information services*, or to private-carriage offerings, it could and surely would have said so."[54]

Broadband providers and industry groups further suggest that because providers currently have privacy policies in place and because industry working groups have developed best practices,

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[50] / Data Memo from Associate Director John Horrigan, Pew Internet & American Life Project, Re: Rural Broadband Internet Use, February 2006. The memo indicates that while 39% of urban and suburban residents compared with 24% of rural Americans have high-speed internet connections in their homes.

[51] / BellSouth, at 15. *See, also*, the National Cable & Telecommunications Association ("NCTA"), stating: "the competitive marketplace will ensure providers are responsive to consumer needs." NCTA, at 7.

[52] / Time Warner, at 8.

[53] / Verizon, at 11.

[54] / *Id.*, at 9 (emphasis in original).

no regulations are necessary.[55] OPASTCO characterizes proposals for CPNI-type rules as "premature" and suggests that customer retention incentives provide for service agreements and privacy policies that "most consumers find acceptable."[56] The Ratepayer Advocate does not share the industry's confidence in the marketplace nor does the Ratepayer Advocate share the National Cable & Telecommunications Association's ("NCTA") view that the "Commission (and Congress) would be justified in relying on the robust competitive broadband market" to protect consumer privacy.[57]

The presence of a broadband duopoly does not provide adequate market discipline. BellSouth's own comments highlight the emerging duopoly in the broadband market consisting of cable companies and telephone companies: As of December 31, 2004, there were approximately 21.4 million cable modem subscribers and 13.8 million DSL subscribers. In contrast, a mere 2.7 million remaining broadband subscribers utilized "other" broadband alternatives such as such as fixed wireless and satellite.[58] As stated in the Ratepayer Advocate's initial comments, firms in an oligopoly behave in a manner which approximates a monopoly and the promises of a competitive marketplace are left unfulfilled.[59]

As stated in initial comments, the Ratepayer Advocate commends the Commission's recognition that consumer privacy is important regardless of the technology deployed.[60] The Ratepayer Advocate continues to support the application of CPNI requirements for broadband

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[55] / BellSouth, at 16; AT&T, at 11-12; USTelecom, at 5; Verizon, at 10.

[56] / OPASTCO, at 4.

[57] NCTA, at 7.

[58] / *See* BellSouth, at 5 citing FCC report "High Speed Services for Internet Access" July 2005, Table 1

[59] / Ratepayer Advocate, at 4-5.

services. The Commission should consider the proposal by BellSouth that if the Commission adopts CPNI rules for broadband providers, it should apply the rules already developed for telecommunications services, where feasible, so that providers of telecommunications and information services are not subject to two distinct sets of rules.[61] Verizon is concerned that any new regulations applicable to its broadband services may not be identical to CPNI rules it operates under as a telecommunications carrier. Verizon states: "Because telephone companies have operated successfully under the existing system that allows the sharing of customer information within a company – including with a company's ISP – or with agents and joint venture partners, the Commission should take special care not to impose new restrictions on the use of CPNI that would interfere with this successful collaboration."[62]

NCTA similarly contends that if the Commission determines that privacy rules are necessary, cable operators should not be required to comply with any privacy rules other than those applicable to cable services under Section 631 of the Communications Act.[63] NCTA expresses concern about being subject not only to Section 631 requirements but also to "an entirely different scheme such as Section 222 on cable modem service."[64] Although the Ratepayer Advocate recognizes the value of minimizing duplicative and/or inconsistent regulatory requirements, the Commission should not exempt the cable industry from any privacy requirements promulgated as a result of the Commission's deliberations in this proceeding.

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[60] / *Id.*, at 8.

[61] / BellSouth, at 17.

[62] / Verizon, at 13.

[63] / NCTA, at 4.

[64] / *Id.*, at 7, cite omitted.

Opponents of the adoption of privacy rules also claim that the FTC already has the authority to address privacy issues and that the adoption of CPNI regulations would unnecessarily "burden" broadband providers.[65] USTelecom and Verizon also suggest that FTC and state attorneys general authority in this area is sufficient.[66] OPASTCO makes a similar argument, suggesting that CPNI rules would "divert resources away from network upgrades."[67] Such arguments ring hollow given that commenters claim to already have robust policies in place.

Despite industry opposition, many other commenters do support the extension of privacy requirements to broadband internet access services.[68] As noted by the Ohio PUC and NARUC, the rationale for CPNI restrictions is that carriers are in a unique position to collect personal information. The Ratepayer Advocate agrees with the Ohio PUC that that "VoIP-based telephone service providers stand in the same unique position,"[69] a position also supported by NARUC.[70] NASUCA (National Association of State Utility Advocates) observes that not only do broadband providers collect typical CPNI information, but they also can use software to track a customer's Internet and e-mail usage and the frequency and types of websites a customer visits. NARUC indicates that therefore, "the need for non-economic requirements to protect consumer privacy is arguably even more necessary for a customer of a broadband access provider than traditional providers, due to the more extensive and highly sensitive information that the provider can gather."[71] The Ratepayer

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[65] / *See*, *e.g.*, AT&T, at 12.

[66] / USTelecom, at 5; Verizon, at 23.

[67] / OPASTCO, at 5.

[68] / Ohio PUC, at 7; NASUCA, at 24; CompTel, at 2; Consumer Groups, at 6; AARP, at 5-6.

[69] / Ohio PUC, at 7.

[70] / NARUC, at 12.

[71] / NASUCA, at 24.

Advocate supports the Ohio PUC's proposal that the Commission limit the types of information that VoIP telephone service providers are permitted to collect to that which is necessary to establish and maintain an account and to provide service.[72] Finally, the Ratepayer Advocate concurs with NASUCA's analysis:

> Consumers have come to understand and expect a general level of privacy protection for their personal information that should not depend on changes in format or underlying technology of the service. At a minimum, each of these provisions should be enforced against broadband access providers to the extent it is technically feasible.[73]

As described in initial comments, the costs resulting from a failure to adopt appropriate safeguards are simply too high.[74] Furthermore, the Commission has recently issued a Notice of Proposed Rulemaking seeking comments on additional steps it should take with respect to CPNI that is collected by telecommunications carriers.[75] In the *CPNI Notice*, the Commission notes that there are several websites advertising the availability of calling records for landline, cell phone and VoIP subscribers[76] and seeks comment regarding whether requirements it adopts in the rulemaking should "extend to VoIP service providers or other IP-enabled service providers."[77]

The Commission should adopt policies regarding broadband slamming and continue to delegate enforcement to the states.

The Ratepayer Advocate agrees with the assessment of many industry commenters that it

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[72] / Ohio PUC, at 8.

[73] / NASUCA, at 27.

[74] / See, Ratepayer Advocate, at 9-10.

[75] / *In the Matter of Implementation of the Telecommunications Act of 1996*, CC Docket No. 96-115; *Telecommunication's Carriers' Use of Customer Proprietary network Information and other Customer Information*; *Petition for Rulemaking to Enhance Security and Authentication Standards for Access to Customer Proprietary Network Information*, RM-11277, *Notice of Proposed Rulemaking*, Rel. February 14, 2006 ("CPNI Notice").

[76] / *Id.*, at para. 1.

[77] / *Id.*, at para. 28.

would be difficult to change a customer's broadband internet service by "slamming" in the traditional sense.[78] Changes to a customer's service would most likely require an in-home visit or at least a switch of the customer premises equipment ("CPE") and multiple software changes. However, the Ratepayer Advocate does not concur with AT&T's conclusion that "absent evidence of such broadband slamming, the Commission should not expend its limited resources to create a solution for a problem that has not been shown to exist."[79]

Instead, the Ratepayer Advocate urges the Commission to consider carefully the observations of Third Party Verification, Inc. ("3PV") and the Ohio PUC regarding consumer subscription to VoIP services, which provides some evidence that the Commission may need to establish standards with respect to a traditional phone service customer's switch to VoIP services. For example, 3PV cites evidence showing that:

> . . . a little over 40% of putative new VoIP customers do not understand what services they are signing up for. In short, in some cases fraud and in others miscommunications – combined with the lack of State involvement make VoIP subject to significant levels of customer confusion.[80]

3PV asserts that because of the regulatory void surrounding VoIP services, many carriers are not following established procedures, nor are they using the type of language mandated for traditional telephone services when switching customers to VoIP services.[81] The Ratepayer Advocate is concerned by 3PV's further comment:

> In this regulatory vacuum, regulated carriers are deciding not to release customers to the new VoIP provider without a third party verification that meets with State and/or

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[78] / *See*, *e.g.*, BellSouth, at 11-12; AT&T, at 8; USTelecom, at 5-6; Verizon, at 14.

[79] / AT&T, at 8; *See*, also, Time Warner, at 8-9; Verizon, at 14

[80] / 3PV, at 6.

[81] / *Id.*, at 7.

> FCC approval. While this is being done mainly to keep current customers from being switched to VoIP providers, the side effect is that some regulation is being applied, although from the wrong source and for the wrong reasons. The result is the same as when traditional telephone companies were unsupervised and the 1996 Telecommunications Act was enacted to bring the industry under control.[82]

The Ohio PUC is concerned that the "underlying technology of the Internet is vulnerable to manipulation by invasive programming and hijacking techniques that might be used to slam VoIP customers in ways that have not been considered or are even possible with traditional telephone services."[83] Based on these various and significant concerns about the potential for broadband slamming, the Commission certainly should not foreclose the opportunity for states to adopt slamming rules as warranted.

Truth-in-billing requirements are essential for the broadband information access market to operate efficiently, and, furthermore, states should have the authority to establish additional rules as necessary.

BellSouth and OPASTCO assert that competition forces broadband Internet access providers to provide all the information that customers want and need on their bill.[84] Industry commenters suggest that if providers are providing misleading bills, the provider is subject to general state consumer protection laws.[85] AT&T claims that Truth-In-Billing ("TIB") rules were adopted for common carriers because they were expressly excluded from general consumer protection laws enforced by the FTC. According to AT&T, in the case of broadband services, the services would be subject to FTC jurisdiction, and thus TIB rules are "unnecessary and duplicative."[86] Broadband

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[82] / *Id.*, at 9.

[83] / Ohio PUC, at 9-10. *See*, also, NARUC, at 13

[84] / BellSouth, at 10; OPASTCO, at 5.

[85] / *See*, *e.g.*, BellSouth, at 20; OPASTCO, at 6; AT&T, at 9-10.

[86] / AT&T, at 9; *See*, also, Verizon, at 16.

providers further cite concerns regarding the need to modify billing systems to comply with TIB rules[87] and Time Warner suggests that "imposition of new mandates inevitably would be followed by interpretive disputes and litigation."[88]

As did the Ratepayer Advocate in its initial comments (at 11), the Ohio PUC cites the FCC's own acknowledgement that the Consumer and Governmental Affairs Bureau has received complaints regarding broadband internet access billing practices.[89] The Ohio PUC's Call Center has received over 450 calls regarding DSL marketing and billing concerns. The Ratepayer Advocate concurs with the Ohio PUC that "consumers of VoIP-based telephone service are entitled to the same level of billing information and clarity [as traditional phone service consumers] since new service offerings can prove to be confusing to consumers."[90]

The Ohio PUC also expresses concern with billing for bundled services and the ability of consumers to identify separate charges for each service and to compare rates.[91] USTelecom indicates that current rules already govern these bundles, stating that when broadband services are provided in a bundle with regulated telephone services "billed broadband services essentially come under the Commission's existing truth-in-billing rules."[92] Verizon also notes that 90 percent of its broadband Internet access customers are billed through affiliate local Verizon companies, and that, therefore, the telecommunications portion is already subject to Commission oversight.[93] However, the

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[87] / *See*, *e.g.*, OPASTCO, at 5.

[88] / Time Warner, at 10.

[89] / Ohio PUC, at 10-11

[90] / *Id.*, at 11.

[91] / *Id.*, at 12.

[92] / USTelecom, at 5.

[93] / Verizon, at 16-17.

Ratepayer Advocate, and other commenters[94] continue to support consistent rules for all broadband Internet access provider billing, regardless of whether such services are provided as part of a bundle.

The Commission should move forward in requiring providers to provide notification of network outages to ensure reliable, ubiquitous service.

As stated in the Ratepayer Advocate's initial comments, notification requirements for network outages will "increase the incentive for broadband access providers to maintain their networks with proper diligence."[95] By contrast, the industry would have the Commission rely upon competition in the market to protect consumers and to create the necessary incentives for providers to reduce network outages.[96] BellSouth and Qwest further argue that a full record on the issue must be developed before any requirements can be adopted. They contend that if the Commission deems outage reporting for broadband Internet access providers necessary, the Commission should monitor the market; design specific proposals; seek comment; and review such proposals through a full rulemaking proceeding.[97] USTelecom, while asserting that "most broadband service providers have built their networks with redundancy and self-healing properties, virtually eliminating the possibility than an outage will occur on their network,"[98] suggests that if broadband providers do have outages, then customers "can easily switch [ ] service to another provider."[99] The Ratepayer Advocate, for reasons expressed above in these comments, is not convinced by the arguments of USTelecom and

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[94] / AARP, at 4; NASUCA, at 33-34; Consumer Groups, at 9.

[95] / Ratepayer Advocate, at 12.

[96] / BellSouth, at 20-21; AT&T, at 18-19; Qwest, at 3.

[97] / BellSouth, at 22; Qwest, at 4, 9.

[98] / USTelecom, at 5.

[99] / *Id.*, at 6.

other industry participants[100] that consumers can switch easily among providers if they experience unreliable broadband internet access services. Finally, as with other consumer protection proposals in this *NPRM*, providers assert that the costs of outage reporting "greatly exceed" the benefits, yet fail to provide adequate detail regarding such a cost/benefit analysis.[101] NASUCA reminds this Commission of the industry protests regarding the burden associated with the adoption of Part 4 outage requirements[102] and observes:

> Despite legal challenges to the new rules, industry cries subsided once the effective date arrived and providers had the chance to actually use the new streamlined electronic filing procedure designed by the Commission. Exaggerated or unfounded negative perceptions of the new reporting system were largely eliminated.[103]

The Telecommunications Industry Association ("TIA") expresses a concern that identifying the name or type of equipment that experienced a failure may lead to "unfair and undeserved damage to the equipment supplier's business reputation" and could also lead to infrastructure disclosures that expose networks to attacks.[104] Nonetheless, the Ratepayer Advocate supports the New York State Department of Public Service's ("New York DPS") position that "states have a vested interest in ensuring adequate infrastructure, good design practice and rapid post-disaster recovery in order to ascertain that reliable telecommunications are consistently available for commerce and public safety."[105] The Ratepayer Advocate concurs with NASUCA's position that "[e]ven more than with

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[100] / Time Warner, at 11; Verizon, at 19.

[101] / Qwest, at 4; OPASTCO, at 6.

[102] / NASUCA, at 37, citing *In the Matter of New Part 4 of the Commission's Rules Concerning Disruptions to Communications*, ET Docket No. 04-35, *Report and Order and Further Notice of Proposed Rulemaking*, Rel. August 19, 2004.

[103] / *Id.*, at 39.

[104] / TIA, at 5.

[105] / New York DPS, at 4.

'Plain Old Telephone Service', consumers of broadband are spending large amounts of money for transmissions in which service disruptions mean loss of data, not just voice."[106] As discussed below, the broadband information access market cannot be considered to operate efficiently and without market failure unless and until consumers have access to full information regarding service quality to assist them with their purchasing decisions.

Readily available information about industry participants' practices is essential to a well-functioning market place.

Informed purchasing decisions lead to a more efficiently functioning marketplace than one in which consumers are in the dark about the implications of their consumption choices. Accordingly, the Ratepayer Advocate concurs with the Consumer Groups' recommendation that consumer complaints "be tracked in order to identify abuse actors and practices."[107] Also, as AARP states, "[p]ublicly available and easily accessible records of consumer complaints regarding all modes of broadband service are essential if consumers are to make intelligent and informed buying choices."[108] NASUCA submits that the FCC should have information available for consumers regarding broadband providers so that they can check a providers "track record" before buying a provider's service. NASUCA also suggests that the FCC track complaints against broadband service providers, with the data regarding technology platforms as disaggregated as possible. Excessive numbers of complaints, even those that consumers may resolve through self-help, may be symptomatic of larger issues about which the FCC, state commissions, NASUCA members and the state attorneys general

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[106] / NASUCA, at 38.

[107] / Consumer Groups, at 7.

[108] / AARP, at 3.

should be aware.[109]

The Ratepayer Advocate urges the Commission to collaborate with states to post some type of report card or score board on the performance and practices of individual broadband carriers so that consumers can make informed choices. The information should be widely distributed and easy to read. The societal cost of deceptive, misleading, and fraudulent practices is high and therefore regulatory intervention is essential. NASUCA aptly observes that the "FCC will promote competition and supplier diversity by bolstering consumer confidence in the integrity of its complaint resolution procedures."[110] The Ratepayer Advocate also supports NASUCA's specific recommendation:

> As discussed below, in Section III.H.4., *infra,* this complaint category should be included in the quarterly complaint and inquiry report issued by the Consumer and Governmental Affairs Bureau and should be made available on line as soon as possible following the quarter's end. That Bureau's annual report should include for each technology platform: the number of complaints, the nature of the complaints and the year's trends as to which patterns were increasing and which patterns were decreasing. Such tracking will give Congress, the Commission and the states the information they need to analyze and address problems as they arise. *See*, Section XX, *infra*. In addition, by providing complaint statistics on broadband access providers to consumers, the Commission will be giving consumer needed tools to assess the marketplace and make competition work to their advantage.[111]

Ample notification should be required of broadband providers who seek to discontinue service.

BellSouth, Verizon, and Time Warner express doubts about the necessity of Section 214-type notification requirements.[112] Time Warner suggests that customers can easily find another broadband

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[109] / NASUCA, at 53.

[110] / *Id.*, at 48.

[111] / NASUCA, at 36.

[112] / BellSouth, at 23; Verizon, at 22-23; and TimeWarner, at 12.

service and that any notice requirements would "pointlessly introduce inefficiencies."[113] However, at least one provider, AT&T, suggests that it may in fact be "prudent for the Commission to consider adopting some limited discontinuance procedures for broadband Internet access providers."[114] The Ratepayer Advocate agrees with AT&T's observation that "service providers that decide to discontinue service to their customers and exit the marketplace usually have few incentives to meet their customers' needs."[115] AT&T's support relies on the concern that the lack of cooperation for transitioning AT&T's newly acquired customers from the previous provider often delays and complicates the transition, potentially adding costs for AT&T.[116] OPASTCO and Verizon suggest that an incumbent local exchange carrier ("ILEC") discontinuing broadband service would still have an incentive to give adequate notification because it would seek to ensure that customers of its other services still retain a positive image of the company.[117]

Yet, not all providers that discontinue service will still be offering other services in the market and, as NARUC correctly observes: "[w]ith VoIP-based service being marketed as a substitute for phone service over broadband facilities, more and more consumers will depend upon broadband in the same way that they have historically depended upon their traditional telephone services."[118] Indeed, the Alarm Industry Communications Committee ("AICC") supports networking outage reporting, discontinuance reporting and slamming rules for broadband Internet access providers regardless of the technology to ensure that its customers can receive uninterrupted alarm

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[113]/ Time Warner, at 12.

[114] / AT&T, at 20.

[115] / *Id.*

[116] / *Id.*, at 21.

[117] / OPASTCO, at 7; Verizon, at 23.

services.[119] Consumers rely upon broadband Internet access for a plethora of services and require timely and adequate notification so that they can make arrangements for new service. For these many reasons, the Ratepayer Advocate continues to support notification requirements. At stated above and in initial comments, the Commission should not simply assume that customers can change services easily.[120] Furthermore, the Ratepayer Advocate concurs with the Ohio PUC that notification requirements provide an excellent method by which regulators and consumer advocates can monitor the marketplace, an endeavor for which the Commission has expressed support.[121] Finally, if broadband providers and telecommunications providers alike would have this Commission and consumers consider VoIP services in any way a substitute for traditional wireline telephone services, consumers must have the same expectations with respect to reliability and continuation of service.[122]

Principles of non-discrimination are essential in the broadband Internet access market to ensure that networks remain open.

The Commission failed to address "net neutrality" in the *NPRM*, yet many commenters have submitted comments addressing the need for standards regarding non-discrimination in the provision of Internet access.[123] Commenters suggest, and the Ratepayer Advocate agrees, that there is a strong

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[118] / NARUC, at 15.

[119] / AICC, at 4-5.

[120] / Ratepayer Advocate, at 13.

[121] / Ohio PUC, at 14. *In the Matters of Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, CC Docket No. 02-33; *Universal Service Obligations of Broadband Providers, Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services*, CC Docket No. 01-337; Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review –Review of Computer III and ONA Safeguards and Requirement, CC Docket Nos. 95-20, 98-10; *Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities*, GN Docket No. 00-185; *Internet Over Cable Declaratory Ruling*; *Appropriate Regulatory Treatment for Broadband Access To the Internet Over Cable Facilities*; CS Docket No. 02-52, *Policy Statement*, FCC 05-151, Rel. September 23, 2005.

[122] / *See*, *e.g.*, Ohio PUC, at 15-16.

[123] / *See*, *e.g.*, NASUCA, at 8-17; Pac-West, at 5-6; CompTel, at 13; Ratepayer Advocate, at 23-24.

likelihood that ILECs will engage in anticompetitive behavior that will harm consumers, as is evidenced by the priority routing proposals currently being discussed.[124] Pac-West Telecomm, Inc. ("Pac-West") aptly observes:

> In fact, ILEC proposals reveal that there is insufficient competition in provision of broadband connections to end users. ILECs are developing and implementing plans to engage in the classic strategy of monopolists and duopolists of increasing revenues by restricting output, in this case in the form of lower speeds. If the last mile broadband market were genuinely competitive, ILECs and cable operators would be competing to provide the fastest speeds, not proposing to artificially restrict output to maximize prices.[125]

NASUCA suggests that "Such discrimination against network content or services is not sound public policy and will inhibit the numerous innovations and consumer benefits associated with broadband networks."[126] Furthermore, Pac-West argues that "While the Commission's Net Neutrality Policy Statement is helpful, it is not enforceable."[127] The Ratepayer Advocate reiterates the concern it expressed in initial comments that "efforts to install 'toll booths' in broadband access networks will not only impede innovation, but will also create new financial hurdles for consumers wishing to take advantage of the Internet."[128]

The Commission should establish the "regulatory floor" but should also encourage states to participate fully in the establishment and enforcement of consumer protection measures.

BellSouth, AT&T, Verizon and USTelecom suggest that should the Commission adopt consumer protection laws, it must preempt state laws concerning broadband services to "eliminate

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[124] / Pac-West, at 5; NASUCA, at 8-9; Ratepayer Advocate, at 23-24.

[125] / Pac-West, at 6.

[126] / NASUCA, at 9.

[127] / Pac-West, at 6. NASUCA expresses similar concerns, suggesting that the net freedom principles expresses in the Commission's policy statements "must be more than mere 'policies.' Instead, they must be specific requirements placed on broadband service providers, requirements both enforceable and enforced." NASUCA, at 10.

[128] / Ratepayer Advocate at 22.

unnecessary hardships that carriers face in having to comply with both national and local rules governing this area" and to "lessen potential consumer confusion in the event rules from different jurisdictions conflict with each other."[129] CTIA suggests that because broadband services "operate without regard to geographic boundaries," only federal regulations should be applied.[130] Similarly, AT&T contends that broadband Internet access services are "inherently interstate services that fall within this Commission's exclusive jurisdiction."[131] AT&T further asserts that states have a role in enforcing general statutes in their states and that states can assist the Commission in monitoring the market.[132] The Ratepayer Advocate disagrees with these carriers' opposition to states' active participation in broadband consumer protection. Because states are on the "front line" of handling consumer complaints, they are in the best position to ensure that measures sufficiently protect consumers, and, therefore, states' role should not be limited to enforcement and monitoring. States have concurrent jurisdiction consistent with our Constitutional form of government.

NARUC's recommendation that the Commission adopt a "practical framework" that does not inhibit state efforts[133] is consistent with the position articulated in the Ratepayer Advocate's initial comments.[134] As NARUC explains, states are often the first stop for consumers,[135] and, therefore, the Commission should bolster but not constrain states' efforts. It is appropriate that the Commission

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[129] / BellSouth, at 24; *See*, also, USTelecom, at 7; Cingular, at 16; Verizon, at 25.

[130] / CTIA, at ii.

[131] / AT&T, at 22; *See*, also, Cingular, at 17; Verizon, at 25.

[132] / AT&T, at 23; *See*, also, Cingular, at 18 stating that to the extent state laws are general consumer protection laws applicable to all businesses, and not just to broadband providers, such laws need not be preempted.

[133] / NARUC, at 1.

[134] / Ratepayer Advocate at 6, 13-14.

[135] / NARUC, at 6.

set the "regulatory floor" or "baseline" consumer protection,[136] but the Commission should not thwart states' efforts to go further than the Commission in establishing and enforcing consumer protection measures. As NARUC explains:

> States commissions excel at delivering responsive consumer protection, assessing market power, setting just and reasonable rates for carriers with market power, and providing fact-based arbitration/adjudication. Sates are also the 'laboratories of democracy' for encouraging availability of new services and meeting policy challenges at the grassroots level. State involvement leverages enforcement efforts and provide, in many instances, faster resolution for consumers.[137]

Similarly, the Consumer Groups state that "state agencies are perceived by consumers as the point of entry into the enforcement of telecommunications rights more often than the FCC."[138]

3PV observes that states can identify more easily the problems and markets in their own territories than can the Commission.[139] In its comments, 3PV also recognizes the benefit that consumers derive from having their own state agencies available to deal with consumer complaints:

> The ability of States to be as involved as they would like in telecommunications consumer protection gives the people within that State a faster, more effective, less bureaucratic process and a more localized advocate when disputes arise. Many consumers do not like having to deal with the Federal government on any level. There is a perception that not only will their individual issue be one of thousands of other issues currently being dealt with by the FCC, but also that the process will become long and burdensome once the Federal government is involved. While this may not always be true, this perception stops many people from seeking help.[140]

Similarly, the Ohio PUC suggests that states "are in the best position to respond to the needs of their

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[136] / *Id.*, at 7-8.

[137] / *Id.*, at 5.

[138] / Consumer Groups, at 10.

[139] / 3PV, at 3.

[140] / *Id.*, at 5.

consumers" and that "State government is often the first stop for consumers."[141] Several commenters support the NARUC "functional approach."[142]

The Ratepayer Advocate disagrees with Verizon, which, in contrast, characterizes the functional approach as a "more radical and thoroughgoing change in the division of regulatory responsibility between this Commission and state regulators than the present NPRM suggests."[143] Verizon further suggests that it "raises issues far beyond the scope of the current proceeding and could not realistically be implemented under existing legal frameworks."[144] The Commission should reject Verizon's position and be guided instead by CompTel's recommendation that "[g]oing forward, the FCC should partner with, rather than preempt, state commissions and state attorneys general, in order to best protect consumers."[145]

The Ratepayer Advocate also concurs with the New York DPS' explanation of the importance of state involvement: "States should not be limited to a role of merely enforcing federal rules, but instead should continue their longstanding practice of providing state-specific consumer protections to subscribers of communications services, by applying their dedicated front-line resources and expertise to protecting the interests of broadband consumers."[146]

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[141] / Ohio PUC, at 4.

[142] / *See*, *e.g.*, Ohio PUC, at 5; New York DPS, at 3.

[143] / Verizon, at 28.

[144] / *Id.*.

[145] / CompTel, at 18

[146] / New York DPS, at 2. See also New York DPS, at 3, stating that "[u]niform federal rules ignore differences in local market conditions."

NASUCA aptly explains the importance of state involvement in consumer protection:

> The practical effect of blanket preemption of industry-specific state consumer protection laws would be to leave all industry-specific consumer protection solely in the hands of federal officials. As in the slamming context, these officials are often far removed, geographically and otherwise, from the victims on whom the deleterious effects of the abuses are visited. They often lack the resources to do justice to the vast majority of the complaints. The remedies available to them may be less effective in halting the abuses than those the states may be able to craft. For each of these reasons, the consumer protection that federal officials can provide is alone insufficient.[147]

In sum, there is a groundswell of support and persuasive rationale for ensuring that states are involved in all aspects of consumer protection. The benefit to consumers of having adequate state consumer protection and the ability of states to protects their citizens is a fundamental bedrock principle in our Constitutional form of government.

[147] / NASUCA, at 44, cite omitted.

III. CONCLUSION

Contrary to the industry's assertions, the broadband market is not yet effectively competitive. Therefore, adequate and comprehensive consumer protection measures are essential. Furthermore, because states are uniquely positioned to identify potential and actual areas of fraudulent, misleading, or disruptive practices in this evolving market, the Commission should encourage states' full partnership in crafting and enforcing consumer protection measures. The Ratepayer Advocate reiterates its support for the Commission's foresight in addressing these important consumer issues in a timely manner.

Respectfully submitted,

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